

**MATTHEW J. McKEOWN**  
Acting Assistant Attorney General  
United States Department of Justice  
Environment and Natural Resources Division  
Washington, D.C.

**NELSON COHEN**  
United States Attorney  
Anchorage, Alaska

**MARK A. NITCZYNSKI**  
US Department of Justice  
Environmental Defense Section  
1961 Stout Street - 8<sup>th</sup> Floor  
Denver, CO 80294  
Phone: (303) 844-1498  
Fax: (303) 844-1350

**RICHARD L. POMEROY**  
**DANIEL COOPER**  
Assistant United States Attorney  
District of Alaska  
Federal Building & U.S. Courthouse  
222 West Seventh Avenue, #9  
Anchorage, Alaska 99513  
Telephone: (907) 271-5071

**Attorneys for Plaintiff United States of America**

**UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
Plaintiff,	)	
	)	Case No. A-01-378 Civil (RRB)
v.	)	
	)	<b>STATUS REPORT AND JOINT</b>
<b>CLARENCE ABELDGAARD,</b>	)	<b>MOTION TO STAY CURRENTLY</b>
<b>OCEANVIEW ENTERPRISES, INC.,</b>	)	<b>PENDING MOTIONS</b>
<b>CLOYD MOSER and MODEB</b>	)	
<b>INVESTMENTS,</b>	)	
	)	
Defendants.	)	
_____	)	

Plaintiff United States of America (“United States”) and Geraldine Barling (“Ms. Barling”) hereby submit this Status Report and Joint Motion to Stay Currently Pending Motions

(“Joint Motion”) in order to facilitate potential resolution of the claims against Ms. Barling. In short, the United States and Ms. Barling have agreed to meet in person in Anchorage, Alaska no later than Friday, March 9, 2007 to discuss settlement, and these parties request that the Court stay the currently pending motions in this case so that these parties may focus their current efforts on settlement. In addition, as discussed further below, these parties propose that a Status Report be filed no later than Monday, March 12, 2007 that addresses the status of the case and suggests further proceedings. The United States and Ms. Barling state further as follows:

1. As this Court is aware, on November 3, 2005, the Court granted the United States’ Motion to Amend Complaint to Add Geraldine Barling as a Defendant. Docket No. 139-1. The United States promptly filed and served the Second Amended Complaint.

2. As of January 25, 2007, no answer had been filed on behalf of Ms. Barling, and on that date the United States filed the United States’ Request That Clerk of Court Enter Default Against Geraldine Barling Pursuant to Fed. R. Civ. P. 55(a) for Failure to Answer Second Amended Complaint (“Request for Entry of Default”). Docket No. 157-1. The Court has not yet ruled on the Request for Entry of Default.

3. On January 26, 2007, counsel for Ms. Barling filed: (1) Response to Motion for Entry of Default by Clerk, Docket No. 158; (2) Motion & Memorandum for Leave to Late File an Answer to the Complaint, Docket No. 159; (3) an Answer, Docket No. 160; and (4) Request for Hearing and Motion for Withdrawal by Attorney, Docket No. 161, along with an affidavit in support of that request. Docket No. 162. The United States’ responses and Ms. Barling’s replies on the motion for leave to late file the answer and motion for withdrawal have not yet been filed, and the Court has not yet ruled on those motions. The Court has scheduled a hearing on the

motion for withdrawal on March 2, 2007.

4. On January 26, 2007, the United States submitted a Status Report pursuant to the Court's January 11, 2007 Minute Order From Chambers Requesting Status Report (Docket No. 156). Docket No. 163. The United States stated in the Status Report that it would respond appropriately to Ms. Barling's filings, and suggested that the United States file a status report within thirty (30) days.

5. Counsel for the United States and for Ms. Barling have engaged in several recent phone conversations about the status of the case and potential settlement. Counsel for Ms. Barling also has been in contact with Ms. Barling several times since the filings of January 25 and 26, 2007. Counsel for Ms. Barling represents that Ms. Barling has committed to participate in a settlement meeting in Anchorage on March 9, 2007 to determine whether settlement without further litigation against Ms. Barling is feasible.<sup>1/</sup>

6. The United States and Ms. Barling wish to make the additional effort of an in-person meeting to attempt to resolve the claims against Ms. Barling through settlement. The United States and Ms. Barling wish to dedicate their current efforts to settlement rather than litigating and arguing the motions currently pending before the Court. Further, the United States and Ms. Barling believe that staying the currently pending motions is necessary for the settlement meeting to be potentially successful.

7. For the foregoing reasons, the United States and Ms. Barling jointly request that the Court stay the motions currently pending before the Court, remove from the Court's schedule

---

<sup>1/</sup> The United States and Ms. Barling may seek to schedule the meeting for earlier than March 9, but agree that the meeting will take place no later than March 9, 2007.

the March 2, 2007 hearing on the motion for leave to withdraw, and order that a status report be filed no later than March 12, 2007 addressing the status of the case and suggesting further proceedings. A proposed order is being filed contemporaneously with this Joint Motion.

Respectfully submitted,

MATTHEW J. McKEOWN  
Acting Assistant Attorney General  
Environment and Natural Resources Division  
UNITED STATES DEPARTMENT OF JUSTICE

/s/ Mark A. Nitczynski  
MARK A. NITCZYNSKI  
Environmental Defense Section  
UNITED STATES DEPARTMENT OF JUSTICE  
1961 Stout Street - 8<sup>th</sup> Floor  
Denver, CO 80294  
PHONE: (303) 844-1498  
FAX: (303) 844-1350

NELSON COHEN  
United States Attorney  
District of Alaska  
RICHARD L. POMEROY  
Assistant U.S. Attorney

OF COUNSEL:  
DAVID ALLNUTT  
U.S. ENVIRONMENTAL PROTECTION AGENCY,  
REGION X  
Seattle, Washington

Attorneys for Plaintiff United States

/s/ Darryl L. Thompson  
DARRYL L. THOMPSON  
841 I Street  
Anchorage, Alaska 99501  
PHONE: (907) 272-9322

FAX: (907) 277-1373

CERTIFICATE OF SERVICE

I, Mark A. Nitzynski, certify that on this February 16, 2007, I caused to be filed electronically the foregoing STATUS REPORT AND JOINT MOTION TO STAY CURRENTLY PENDING MOTIONS (along with the [PROPOSED] ORDER GRANTING JOINT MOTION TO STAY CURRENTLY PENDING MOTIONS) with the Clerk of Court using the CM/ECF system, which sends a Notice of Electronic Filing to Darryl L. Thompson (counsel for Defendant Geraldine Barling), and that I caused hard copies of the foregoing to be served by United States mail on the following persons:

Lawrence V. Albert  
P.O. Box 200934  
Anchorage, AK 99520

Counsel for Cloyd Moser and Modeb Investments

C.E. Abeldgaard  
Oceanview Enterprises, Inc.  
P.O. Box 891  
Homer, Alaska 99603

*Pro Se*

/s/ Mark A. Nitzynski  
MARK A. NITCZYNSKI